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CERTIFICATE OF TRANSMISSION	
I hereby certify that I am transmitting this correspondence to the Commissioner for Patents at the United States Patent and Trademark Office by telephone facsimile to telephone number (571) 273-8300 on May 6, 2009.	
By: <u>J. Michael Neary</u> J. Michael Neary	<u>May 6, 2009</u> Date: May 6, 2009

Inventor(s):	Gerald J. Julien)	
)	Group A.U. 3618
Serial No.:	10/505,356)	
Conf. No	5987)	
)	Examiner: John Daniel Walters
Filing Date:	August 19, 2004)	
Title:	Nitinol Ice Blades)	

Petition to the Commissioner

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

May 6, 2009

Sir:

Applicant respectfully petitions to the Commissioner to exercise his supervisory authority and direct the Examiner in this application to respond to Applicant's Request for Clarification filed on Feb. 9, 2009.

Statement of Facts

On June 30, 2006, Applicant filed a Rule 132 Declaration by Susan Buchanan, President of Triumph Sport, Inc., licensee of this application. Following the filing of that Declaration, the Examiner Issued a Restriction Requirement and then, after Applicant's election on Oct. 2, 2006, an Office Action (Oct. 17, 2006) rejecting all pending claims. In neither the Restriction Requirement or the Office Action did the Examiner acknowledge or address the Declaration. On October 20, 2006, Applicant requested clarification, asking whether the Declaration had been received and

addressed. The Examiner never acknowledged receipt of the request for clarification.

On January 17, 2007, Applicant filed an amendment and submitted another copy of the Buchanan Declaration, and then on Feb 28, 2007, a supplemental amendment to correct an error that had inadvertently crept into applicant's copy of the pending claims. The Examiner issued a final rejection on May 21, 2007 and, for the first time since it was filed on June 30, 2006, acknowledged the Buchanan Declaration, but brushed it off in a single line without addressing on the merits the facts presented in the Declaration.

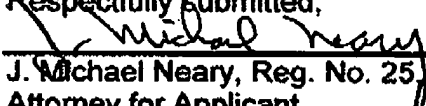
Applicant appealed the final rejection and on Feb 11, 2008, the Examiner reopened prosecution and rejected the same claims that were rejected in his previous final rejection. Applicant responded on May 12, 2008, with an argument for patentability and a restatement that objective evidence of early rejection by experts and later acceptance after overcoming skepticism by actual testing should be accorded greater weight that the Examiner was giving it. Applicant also alluded to a Report that was in preparation showing an improvement in speed that could be achieved with Nitinol skate blades.

Applicant transmitted the above-mentioned Report with a transmittal letter dated August 1, 2008, along with a brief argument explaining the significance of the Report. A final rejection was issued on Feb. 6, 2009, which brushed off the Buchanan Declaration with the same one line that was used in the previous final rejection, and did not acknowledge or address the Report that was submitted on Aug. 1, 2008.

Applicant cannot help but conclude that the Examiner is immune to considering real world evidence if it conflicts with his iron-clad and unshakable opinion of unpatentability. However, Applicant is not complaining about the Examiner's opinion; it is unavoidable the Examiners will develop opinions and sometimes the opinions are unfavorable. What Applicant would like from the Examiner is an explanation of his thinking about why the Buchanan Declaration does not deserve greater weight than he has given with a one-line brush-off, and at the same time he could acknowledge and address the Report. Presumably, the

Examiner will need to provide such an explanation in his Examiner's Answer. Applicant believes that the interests of full and complete exploration of the issues would be served by letting Applicant know the Examiner's reasons for giving the Declaration no weight **before** Applicant's Appeal Brief is due. That is what the Final Rejection is supposed to do. Then, Applicant can address the Examiner's reasons in Applicant's Appeal Brief, and the Examiner can reply in his Examiner's Answer. The Board will then have a full exposition of the issues by Applicant and the Examiner instead of a truncated version that results from the Examiner withholding his full explanation until his Examiner's Answer.

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Respectfully submitted,


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